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8 *Attorney for QBE Insurance Corp.,*
9 *and QBE FIRST Insurance Agency, Inc.*

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 **CLIFFORD MCKENZIE, et al., on behalf**
14 **of themselves and all others similarly**
15 **situated,**

16 **Plaintiffs,**

17 **v.**

18 **WELLS FARGO BANK, N.A., et al.,**

19 **Defendants.**

Case No. 3:11-CV-04965-JCS

QBE INSURANCE CORP.'S AND QBE
FIRST INSURANCE AGENCY, INC.'S
NOTICE REGARDING CONSOLIDATION

Date: September 13, 2013

Time: 9:30 a.m.

Crtrm: G

Judge: Hon. Joseph C. Spero

1 QBE Insurance Corporation and QBE FIRST Insurance Agency, Inc. (collectively, the
2 “QBE Entities”) are not parties to the above-captioned case. However, in their recently filed
3 Motion for Class Certification (“Motion”), ECF No. 139, May 31, 2013, Plaintiffs in this case
4 state that they “would not oppose consolidating this case with *Leghorn* [*v. Wells Fargo Bank,*
5 *N.A.*, No. 4:13-CV-00708-JCS (N.D. Cal.)] pursuant to Fed. R. Civ. P. 42(a). . . .” Motion at 3-4
6 n.7. The QBE Entities are named defendants in the *Leghorn* action, are aware of Plaintiffs’
7 statement, and would oppose consolidation with this case.

8 Under Rule 42 of the Federal Rules of Civil Procedure, the courts have “broad
9 discretion” in determining whether to consolidate cases that involve a common question of law
10 or fact. Fed. R. Civ. P. 42(a)(2); *see Investors Research Co. v. U.S. Dist. Court for Cent. Dist. of*
11 *Cal.*, 877 F.2d 777, 777 (9th Cir. 1989). In making this determination, “the court should weigh
12 the interest of judicial convenience against the potential for delay, confusion, and prejudice.”
13 *Levy v. 24 Hour Fitness Worldwide, Inc.*, No. 3:13-cv-00893-JST, 2013 WL 2456566, at *2
14 (N.D. Cal. June 6, 2013) (internal quotation omitted).

15 Even assuming that a common question of law or fact exists between this case and
16 *Leghorn*, a point which the QBE Entities do not concede, the two cases are not appropriate for
17 consolidation. This case is far more procedurally advanced than *Leghorn*. The QBE Entities
18 have not seen or conducted discovery in this case and should not be required to oppose class
19 certification only days after their motion to dismiss in *Leghorn* was denied. Thus, if the two
20 cases were consolidated, there would be great potential for delay, confusion, and prejudice to the
21 QBE Entities. The QBE Entities are more than willing to submit a more detailed briefing on this
22 issue if the Court would find it helpful and informative.

1 Dated: July 9, 2013

Respectfully Submitted,

2 **BUCKLEYSANDLER LLP**

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4 /s/ Leah R. Mosner

LEAH R. MOSNER

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6 *Attorney for QBE Insurance Corp., and*
7 *QBE FIRST Insurance Agency, Inc.*